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10/612,696	07/02/2003	Kathryn Ann Holtzworth		4410

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EXAMINER

NELSON, JUDITH A

ART UNIT PAPER NUMBER

3644

DATE MAILED: 12/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/612,696

Applicant(s)

HOLTZWORTH ET AL.

Examiner

Judith A. Nelson

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Specification***

The disclosure is objected to because of the following informalities: the term "mesh-like" in line 21 of the specification fails to particularly point out Applicants' invention. Appropriate correction is required.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: while the term "tunnel" is disclosed in the specification, "tunnel-like patterns", is not. Appropriate correction to the specification is required, being mindful not to incorporate new matter within the specification.

***Claim Objections***

Claims 1 and 2 are objected to because of the following informalities: "mesh-like", as recited in claim 1 and "tunnel-like", as recited in claim 2, which are somewhat indefinite terms. Appropriate correction is required.

(The Examiner suggests simply deleting the "-like" from each of these descriptions).

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "with said top panel at neck opening, outer edges and internal tunnel walls" in line 3 and 4 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Furthermore, claim 1 recites in line 6, "a neck aperture"; and in claim 2, line 1 the claim recites "means of releasable attachment". It is unclear in both instances as to whether Applicants are further limiting previously recited structures (such as, "neck opening", recited in line 3 of claim 1; and "means of releasable attachment", as recited in line 5 of claim 1) or introducing new structure. Appropriate correction the claim is required.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,465,425 (Crispin).

Applicants' invention, as best understood is unpatentable over Crispin. In claim 1, Crispin discloses a garment capable of being used as a "pet bib", comprising:

a top panel and a bottom panel (as noticeable depicted in figures 1 and 2) both panels communicating at outer edges (14, 16 and 18) and internal tunnel walls;

a neck opening/aperture (22), inferably creating a left front panel and a right front panel to the garment (as noted in figs. 1-3); and

means for releasably (note col. 4, lines 56-58) opening and closing a gap (24), therebetween the top and bottom panels (as best seen in fig. 1), and further acting as a possible means of adjusting the neck aperture to fit users of varying size.

Pertaining to claim 2, Schiesel further discloses releasable attachment means (interpreted by the Examiner as being the fastener member structures 58 for attachment of the pockets to either the back or the front of the garment).

Crispin discloses the claimed invention except for mentioning the specific material construction of the garment/ pet bib.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have chosen any suitable fabric for the construction of the garment/pet bib, such as a mesh material, so as to prevent the user from becoming overheated wearing the garment, and further since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Claims 1- 3 as best understood are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,209,134 (Schiesel), in view of. U.S. Patent 5,465,125 (Crispin)

Schiesel discloses a pet bib comprising small animal toys (34A-C) attached to the pet bib.

Schiesel however fails to teach: a) the bib being constructed from a mesh fabric; b) the bib having a means for releasable closing a gap between the top panel and the bottom panel; and there being releasable attachments on the top and bottom panel to construct a tunnel pattern within the garment.

As discussed above, Crispin discloses a garment capable of being used as a "pet bib", comprising:

a top panel and a bottom panel (as noticeable depicted in figures 1 and 2) both panels communicating at outer edges (14, 16 and 18) and internal tunnel walls;

a neck opening/aperture (22), inferably creating a left front panel and a right front panel to the garment (as noted in figs. 1-3); and

means for releasably (note col. 4, lines 56-58) opening and closing a gap (24), therebetween the top and bottom panels (as best seen in fig. 1), and further acting as a possible means of adjusting the neck aperture to fit users of varying size.

Pertaining to claim 2, Schiesel further discloses releasable tunnel forming attachment means (interpreted by the Examiner as being the fastener member structures 58 for attachment of the pockets to either the back or the front of the garment).

Neither Schiesel nor Crispin disclose the specific material construction of the garment/ pet bib being mesh.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have chosen any suitable fabric for the construction of the garment/pet bib, such as a mesh material, so as to prevent the user from becoming overheated wearing the garment, and further since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

It would have been further obvious to one having ordinary skill in the art to have constructed the pet bib, as taught by Schiesel, as the vest as taught by Crispin since Crispin teaches that one his constructed vest facilitates easy removal and multiple couplings (tunnel fasteners (58) for accessories (such as pockets) (see col. 3).

**Conclusion**


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patents 5,664,258; 5,331,921 and 5,363,803.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Judith A. Nelson whose telephone number is (703) 305-0984. The examiner can normally be reached on M-Thur. 9:00 a.m. - 6:30 p.m., alt. Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T. Jordan can be reached on 306-4159. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 306-4180.

Judith A. Nelson  
Examiner  
Art Unit 3644

jan   
12/09/03